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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,907

Applicant(s)

SUTHERLAND ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on December 1, 2003 has been entered. Claims 1-10 and 17 have been cancelled. Claims 11-13, 16, 18, and 19 have been amended. The amendment is sufficient to overcome the 35 USC 112 rejections set forth in section 2 of the last Office Action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldenhersh (U.S. Patent No. 4,861,651) in view of Wade (U.S. Patent No. 6,268,450).

Goldenhersh discloses an ultraviolet blocking fabric that transmits light (column 6, lines 7-11) and is useful in various outdoor environments and as window shades (column 2, lines 62-67). The fabric is woven in groups of warp threads and groups of weft threads because the warp threads can be considered a "group," and the weft threads can be considered a "group." Goldenhersh discloses the fabric may be formed of synthetic materials (column 3, line 19), but does not disclose using acrylonitrile fiber.

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Wade discloses fibers particularly suited for use in outdoors textiles because of their UV stability (column 1, lines 11-14) that comprise up to 98% acrylonitrile (column 2, lines 11-14). It would have been obvious to one having ordinary skill in the art to use the acrylonitrile fibers disclosed by Wade in the textile taught by Goldenhersh in order to provide a woven material with improved UV stability. Goldenhersh discloses the apertures in the fabric are only limited in size by the ability of the coating composition to fill the apertures (column 3, line 66 –column 4, line 1), but fail to disclose the openings to be between 0.03 and 0.25 inches. Adjusting the aperture size would be a result effective variable that affects the ability of the fabric to block UV light and hold the coating composition. It would have been obvious to one having ordinary skill in the art to adjust the openings in the fabric of Goldenhersh to the claimed range of about 0.03 to 0.25 inches in order to optimize the breathability and UV protection properties, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With regard to the percentages of A and B category UV light transmitted, achieving the desired percentages would also be a matter of adjusting the result effective variable of the size of the openings, and would be obvious to provide in order to achieve desired final properties of the fabric. With regard to claim 14, Goldenhersh does not disclose the yarn weight. It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a yarn weight that is not less than a yarn number of about 24 in order to provide sufficient durability to the fabric for its various outdoor uses. With regard to claim 15, Goldenhersh does not teach the yarn to be 2 ply. It would have

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been obvious to a person having ordinary skill in the art at the time of the invention to use 2 ply yarn in order to provide increased strength to the fabric and improve durability.

4. Claims 11-16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. (U.S. Patent No. 6,037,280) in view of Wade and further in view of Hughes (U.S. Patent No. 5,503,917).

Edwards et al. disclose a porous woven fabric that has increased ultraviolet blocking (column 4, lines 7-12). Edwards et al. disclose using standard acrylic fibers in the woven material, the reference does not disclose using acrylonitrile fiber. Wade discloses fibers particularly suited for use in outdoors textiles because of their UV stability (column 1, lines 11-14) that comprise up to 98% acrylonitrile (column 2, lines 11-14). It would have been obvious to one having ordinary skill in the art to use the acrylonitrile fibers disclosed by Wade in the textile taught by Edwards in order to provide a woven material with improved UV stability. Edwards et al. disclose forming a porous woven fabric, but do not disclose the size of the openings. Hughes teaches the ratio of apertures to thread is a result effective variable that increases breathability and decreases UV protection when the apertures are great, and vice-versa when the apertures are less (column 1, lines 15-54). It would have been obvious to one having ordinary skill in the art to adjust the openings in the fabric of Edwards et al. to the claimed range of about 0.03 to 0.25 inches in order to optimize the breathability and UV protection properties, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With regard to the percentages of A and B category UV light transmitted, achieving the desired

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percentages would also be a matter of adjusting the result effective variable of the size of the openings, and would be obvious to provide in order to achieve desired final properties of the fabric. With regard to claims 12, 13, 18, and 19, Edwards et al. disclose the woven fabric may be formed of individual threads, fibers, fiber bundles, or fiber tows (column 4, lines 12-16), but fail to specifically teach a grouping of three threads. It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a group of three threads in order to improve the strength of the fabric, since bundling the fibers in groups of increased filaments would strengthen the fabric, and Edwards et al. teach the use of fiber bundles. With regard to claim 14, Hughes et al. teach using 40 denier yarn (Abstract). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a yarn weight with a yarn number not less than 24 in order to provide sufficient strength for the various uses of the Edwards et al. fabric. With regard to claim 15, Hughes et al. teach utilizing 2 ply yarn (column 4, lines 48-50). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use 2 ply yarn in the fabric of Edwards in order to provide improved strength to the fabric.

Response to Arguments

5. Applicant's arguments filed December 1, 2003 have been fully considered but they are not persuasive.

6. Applicant argues that Edwards et al., Wade, Hughes, and Goldenhersh are not directed to a window covering panel. However, the recitation of a window covering

panel is not given patentable weight because it is in the preamble and because it is an intended use of the product.

7. Applicant argues that Edwards does not provide 100 percent pigmented acrylonitrile polymer yarn woven in groups of warp threads and groups of weft threads. The Examiner acknowledges the deficiency concerning the acrylonitrile polymer yarn, which is why the rejection is based on a combination with Wade. However, "groups of warp threads" and "groups of weft threads" limitations do not define any particular structure. A woven fabric comprised of warp threads would have a "group of warp threads."

8. Applicant argues that Edwards does not teach the opening size between the groups of threads and the light blocking and light transmitting characteristics set forth in the claim. The Examiner agrees. However, such limitations would be obvious to a person having skill in the art as set forth above in the rejection.

9. Applicant argues that Hughes does not disclose the various features of claim 11. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

10. Applicant argues that Goldenhersh does not disclose a fabric formed of about 100 percent pigmented acrylonitrile polymer. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

11. Applicant argues that the window covering panels of the present invention do not require a coating material at least partially disposed in apertures formed between the fabric threads. However, the current claim language does not preclude the presence of a coating.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ELIZABETH M. COLE
PRIMARY EXAMINER